

Before the  
Federal Communications Commission  
Washington, D.C. 20554

APR 15 1996

In the Matter of )  
)  
Amendment of Parts 20 and 24 of )  
the Commission's Rules--Broadband )  
PCS Competitive Bidding and the )  
Commercial Mobile Radio Service )  
Spectrum Cap )  
)  
Amendment of the Commission's )  
Cellular PCS Cross-Ownership )  
Rule )

WT Docket No. 96-59

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GN Docket No. 90-314

**COMMENTS OF ALLTEL CORPORATION**

ALLTEL Corporation<sup>1</sup> ("ALLTEL") hereby submits its comments in the above-referenced proceeding<sup>2</sup> respecting the proposed revision to the Commission's Part 24 definition of rural telephone companies as well as the Commission's reevaluation of the Cellular/PCS cross ownership and attribution rules in the wake of the Sixth Circuit's remand.<sup>3</sup> As shown below, ALLTEL believes the Commission can best ensure the expeditious provision of PCS service to rural markets by adopting the definition of rural telephone company contained in the

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<sup>1</sup> ALLTEL Corporation is a diversified telecommunications holding company with subsidiaries providing local exchange service, cellular service, information services, telephone equipment and supplies.

<sup>2</sup> Notice of Proposed Rule Making in WT Docket No. 96-59 and GN Docket No. 90-314, FCC 96-119 (released March 20, 1996)(the "NPRM")

<sup>3</sup> Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752 (6th Cir. 1995)

Telecommunications Act of 1996 (the "1996 Act").<sup>4</sup> Further, ALLTEL argues that the Cellular/PCS cross ownership and PCS spectrum cap rules should be abrogated in favor of the single, generalized CMRS spectrum cap contained in Part 20 of the Commission's regulations.

I. Adopting Congress' Definition of Rural Telephone Companies for Purposes of Section 309(j) Would Provide Greater Flexibility in Serving Rural Markets.

The Commission is to be commended for soliciting comments as to whether Congress, in defining rural telephone companies in the 1996 Act, intended the definition to apply to Section 309(j). NPRM at para. 52. ALLTEL believes that use of the definition for Section 309(j) purposes may, in fact, be mandated by the 1996 Act.

The Communications Act of 1934, as amended (the "Act"), at Section 3 now contains a new subsection (47) which sets forth the definition of "Rural Telephone Company." Section 3 of the Act contains definitions of general applicability unless the context of a particular provision requires otherwise.

Section 309(j)(3)(B) of the Act requires the FCC, when designing a competitive bidding system, to promote economic opportunity and competition "...by disseminating licenses among a wide variety of applicants including small businesses, rural telephone companies and businesses owned by members of minority groups and women. Similarly, Section 309(j)(4)(C) of the Act requires the Commission to take the same considerations into account when implementing auction regulations.

Although clearly empowered to do so, the Congress did not insert a specific definition of

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<sup>4</sup> Public Law No. 104-104, 110 Stat. 56 (1996)

rural telephone companies in Section 309 for the purposes of either subparagraph 309(j)(3)(B) or 309(j)(4)(B) in the 1993 OBRA, in which those provisions had their genesis, or in the 1996 Act.<sup>5</sup> Further, no provision in the 1996 Act, and in particular, Section 251, contains any indication that the Section 3 definition of rural telephone company was to be limited in applicability either to a particular section or to the provisions of the 1996 Act.

Congress could have defined rural telephone companies in the 1993 ORBA, but at the time, it chose instead to defer to the Commission's discretion. With the passage of the 1996 Act, Congress, in recognition of the special status of rural and independent telephone companies, has now chosen to create a separate class of local exchange carrier based upon the characteristics of both the carrier and the territories it services. This definition, by virtue of its inclusion in Section 3 of the Act as a definition of general applicability, applies to the entire Act. In effect, Congress has now established the definition of a rural telephone company and the benefits which should be extended under Section 309(j) to those carriers meeting the definition.

Were the Commission to follow the Congressional mandate, ALLTEL's local exchange subsidiaries would be eligible for partitioning larger PCS markets under the standards set forth in Section 24.714 of the Commission's rules. See also, Declaratory Order in the Matter of Partitioning Plan of Bay Springs Telephone Company, PCS PrimeCo, L.P. and Peterson County Communications, L.P., FCC DA 95-865 (released April 18, 1995). ALLTEL would also receive the added flexibility of an increased cellular attribution threshold for purposes of the Cellular/PCS

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<sup>5</sup> In this regard, it is instructive to note that where Congress saw the need to define terms within the context of particular provisions, it did so. Section 309(j)(3)(C), for example, contains definitions for both "media of mass communications" and "minority group."

cross ownership prohibitions. However, under the Commission's proposal, ALLTEL would not be eligible for either financing benefits or the F block due to the gross assets and revenues caps. The net result of the Commission's adoption of the 1996 Act's definition would be to provide ALLTEL (and other mid-sized companies) the flexibility needed to compete, without sacrificing the other considerations underlying the entrepreneurs policy for the C and F blocks.

## II. Mid-Sized Companies Require Greater Flexibility To Compete For PCS Authorizations

ALLTEL is a diversified telecommunications company with both local exchange and cellular interests in such geographically diverse states as Ohio, New York, Pennsylvania, Georgia, Alabama, Florida and Arkansas. While some may argue that ALLTEL is a company of some size, it is in reality dwarfed by other telecommunications service providers currently poised to compete in every facet of the telecommunications market.<sup>6</sup>

ALLTEL, not unlike other local exchange carriers, lost its local exchange franchise in the wake of the passage of the 1996 Act. Rather than bemoan that loss, ALLTEL is fully prepared to engage its competitors. In order for it to do so, the Commission must provide ALLTEL and other similarly situated carriers with the maximum flexibility available to compete in existing service areas and expand into new markets, and in particular, PCS.

The Commission's rules currently constrain ALLTEL's ability to augment service in its

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<sup>6</sup> A few simplistic examples illustrate this point. Cable-giant Time Warner is poised to provide local competition to ALLTEL's local exchange business in Ohio. AT&T, through both its McCaw acquisition and new PCS system, is poised to provide wireless services on a nationwide basis. MCI, now a multibillion dollar company with a national brand name, intends to enter the wireless market through resale. The Regional Bell Holding Companies also remain potent competitors in each of the states in which ALLTEL provides service.

local exchange and cellular territories with PCS facilities. Participation in the auction for the A&B blocks was not a viable alternative for ALLTEL. The geographic scope of MTA markets was too large and, when coupled with the costs of both spectrum acquisition and build-out, required a commitment of resources which ALLTEL believed was imprudent. The rules governing the C block auction similarly prevented ALLTEL from direct participation due to the gross assets and revenues caps. As an alternative, ALLTEL followed the spirit of the Commission's entrepreneurs block policy and invested in a C block eligible small business. Due to the elevated bidding levels in the C block auction, this applicant withdrew from the auction. Even were this not the case, given the control group requirements for the C block, ALLTEL could not ensure that any market chosen by the applicant would overlay any of the ALLTEL local exchange properties or provide needed geographic expansion for its existing cellular systems. Further, and given the increased potential for significant overlap due to the smaller size of BTA territories, the PCS applicant was barred from obtaining any BTA in which ALLTEL had a minority, noncontrolling interest of 40% or more in an overlapping cellular system. Conversely, by virtue of its minority interest in the PCS applicant, ALLTEL would have been prevented from obtaining a minority non-controlling interest of 40% or more in any cellular system significantly overlapping a PCS market. The attribution rules similarly limited ALLTEL's ability to enter into either management agreements or joint marketing arrangements with A,B, or C block PCS licensees.

Nor could ALLTEL seek to partition larger PCS markets. Partitioning was a benefit bestowed by the Commission only upon those rural local exchange carriers with fewer than 100,000 access lines, including affiliates. While many of its local exchange properties taken

separately would have met the 100,000 access line standard, the imposition of the affiliation rule rendered ALLTEL and each of its subsidiaries ineligible for partitioning. Although its local exchange properties also served rural markets, ALLTEL was caught between regulatory standards which effectively prohibited the combination of its rural local exchange business and PCS on an economically viable basis.

III. The Special Needs of Rural Markets Requires the Commission to Revisit its Definition of Rural Telephone Companies.

The Commission in reviewing its competitive bidding rules should again note that Congress included other considerations in Section 309(j). Among those contained in Section 309(j)(3)(A) are the development and rapid deployment without administrative or judicial delays of new technologies, products and services for the benefit of the public, including those residing in rural areas. Under Section 309(j) and the balance of the Act, the ultimate goal is the provision of service to the public, not the promotion of the interests of licensees of particular sizes.

The Commission has repeatedly acknowledged the need for expeditious provision of PCS service in rural areas. See Fifth Report and Order in PP Docket No. 93-253, FCC 94-178 (released July 15, 1994) at paras. 148-153. Similarly, the Commission has acknowledged that companies providing service in rural areas are best situated to provide PCS service given their existing wireline infrastructure. *Id.* Adoption of the 1996 Act's definition of rural telephone company is therefore entirely consistent with the general mandates of Section 309(j); it would provide ALLTEL with new opportunities to provide PCS service to its rural exchange areas in conjunction with its wireline facilities. Further, ALLTEL notes that the Commission's build-out requirements for PCS systems are population based. 47 CFR Sec. 24.203. MTA and BTA

broadband licensees, burdened with the expense associated with spectrum acquisition and build-out, may not find it economically feasible for some time to service less densely populated areas such as ALLTEL's local exchange service territories. Yet, under the current rules, ALLTEL is precluded from seeking to partition PCS markets even with the consent of the licensee.

The Commission's ultimate goal should be to maximize the regulatory flexibility of those carriers willing to provide service in rural areas. Competitive bidding is a market place solution to awarding licenses -- it is both efficient from an administrative perspective and compensates the public for the use of the spectrum. But the competitive bidding process has its minor imperfections. The highest bidder may not make the best and most complete use of the spectrum over the entire territory acquired. For example, the build-out requirements for certain MTAs may be met by constructing facilities solely in the more densely populated areas leaving spectrum covering less populated areas unused. These imperfections may be cured through the development of a secondary market mechanism, like partitioning. MTA and BTA licensees may keep their most valued territories while transferring the rights to areas less prized to others who value them more highly. The time is now right for the Commission to augment the emerging secondary market in PCS authorizations by permitting companies serving rural areas the flexibility to partition markets. Conforming the Commission's definition of rural telephone companies to that

contained in the 1996 Act would accomplish that end.<sup>7</sup>

IV. The Commission Should Abrogate the Separate PCS/PCS  
and Cellular/PCS Cross Ownership Rules in Favor of a  
Single Modified CMRS Spectrum Cap.

The Commission's cross ownership and attribution rules are overly complex and in some respects, redundant. Currently, Part 24 of the rules provides for a different level of ownership attribution for PCS licenses (5%) than for cellular licenses (20%). The attributable level of a cellular interest for PCS purposes, however, may rise to 40%, depending upon the nature of the applicant in which the PCS interest is held or upon the nature of the cellular interest holder. The matter is further complicated by the Part 20 rules which establishes a general 20% attribution threshold for all CMRS interests whether they be held in cellular, SMR or PCS facilities.

ALLTEL suggests that, with respect to future auctions, the Commission abrogate the Part 24 PCS/PCS and Cellular/PCS cross ownership rules in favor of a single modified Part 20 spectrum cap under which any non-controlling interest of 49% or less would be non-attributable. The Commission's rules currently provide that control, however exercised, is attributable. See 47 CFR Sec. 20.6(d)(1). The Commission's case law on de facto control issues is also well settled. See Intermountain Microwave, Inc., 24 Rad. Reg.(P&F) 983 (1963). Further, there is no

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<sup>7</sup> ALLTEL notes that cellular and PCS licensees would be provided additional flexibility were the Commission to adopt rules governing the disaggregation of spectrum in the near future. Indeed, given the bidding levels in the C Block, disaggregation of spectrum and partitioning may in fact provide the opportunity for small businesses to "spin-off" a portion of either their spectrum or territory to help finance spectrum acquisition and build-out. Should the Commission adopt such a procedure, however, C Block entrepreneurs should be guaranteed that they will not suffer a loss of bidding credits or financing benefits. In this connection, ALLTEL notes that the Commission should revise Section 24.839(d)(3) of the rules to ensure that C Block licensees may partition markets with rural telephone companies (as may be newly defined by the Commission) without suffering a loss of these benefits.

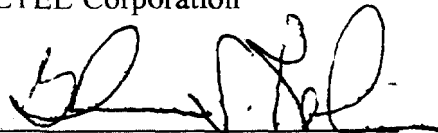


discernable difference between a currently permissible 40% interest and a 49% percent interest, particularly in view of the C and F band control group requirements and the availability of the 49% single investor option.

Adoption of such a standard would allow cellular carriers with non-controlling minority interests to participate in PCS, either through auction or the emerging secondary market. PCS licensees would have a greater ability to attract needed capital from investors with minority cellular interests who have been precluded from investing under the current attribution rules. Further, cellular licensees would be permitted to geographically expand the coverage of their smaller MSA and RSA systems on 20 MHZ of spectrum to better approximate the territorial coverage BTAs and MTAs. While a cellular carrier may fail to aggregate 20 MHZ of PCS spectrum, that result should be obtained as a consequence of the auction process and not by mere application of the Commission's conflicting attribution standards.

Respectfully submitted,

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